

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CASE NO. 3:23-CV-163-RJC-DCK**

EBONY JOI FAULKENBERRY,

Plaintiff,

v.

NOVANT HEALTH INC.,

Defendant.

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**MEMORANDUM AND
RECOMMENDATION
AND ORDER**

THIS MATTER IS BEFORE THE COURT on “Defendant’s Motion To Dismiss With Prejudice Pursuant To F.R.C.P. 12 (B)(1), (B)(4), (B)(5) And (B)(6), Answer And Affirmative Defenses To Plaintiff’s Complaint” (Document No. 17), and “Defendant’s Motion For Extension Of Time To File Memorandum In Support Of Its Motion To Dismiss...” (Document No. 18), filed August 20, 2024. These motions have been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b), and immediate review is appropriate. Having carefully considered the motions and the record, respectfully, the undersigned will recommend that the motion to dismiss be denied without prejudice and will order that the motion for extension of time be denied.

On August 20, 2024, Defendant’s counsel filed the pending motions (Document Nos. 17 and 18), as well as Notices of Appearance (Document Nos. 14 and 15) and “Defendant Novant Health, Inc.’s Motion To Dismiss Pursuant To Fed. R. Civ. P. 12(b)(1), (b)(4), (b)(4), (b)(5), And (b)(6), Answer And Affirmative Defenses To Plaintiff’s Complaint” (Document No. 16). Defendant’s request for leave to file a brief in support of the filed motion to dismiss twenty-one (21) days later is unusual and inconsistent with the Local Rules of this Court. (Document No. 18).

The undersigned notes the Local Rules state that “[a] brief **must** be filed contemporaneously with the motion” and that “[a] party seeking a decision on any preserved motion **must file a separate motion and supporting brief.**” LCvR 7.1(c) (emphasis added).¹ There does not appear to be any good reason Defendant cannot file a brief contemporaneously with its motion – whether that occurs this week or three weeks from now. As such, the undersigned finds that the pending motions should be denied, without prejudice to Defendant filing a motion to dismiss and supporting memorandum at a later date, if necessary.

Although consultation between the parties is not required, the undersigned respectfully suggests that parties confer in a good faith attempt to resolve this case or narrow the issues, prior to any further motions practice. See LCvR 7.1(b).

RECOMMENDATION AND ORDER

FOR THE FOREGOING REASONS, the undersigned respectfully recommends that “Defendant’s Motion To Dismiss...” (Document No. 17) be **DENIED WITHOUT PREJUDICE**.

IT IS ORDERED that “Defendant’s Motion For Extension Of Time To File Memorandum In Support Of Its Motion To Dismiss...” (Document No. 18) is **DENIED**.

TIME FOR OBJECTIONS

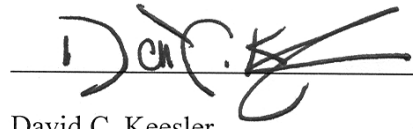
The parties are hereby advised that pursuant to 28 U.S.C. § 636(b)(1)(C), and Rule 72 of the Federal Rules of Civil Procedure, written objections to the proposed findings of fact, conclusions of law, and recommendation contained herein may be filed within **fourteen (14) days** of service of same. Responses to objections may be filed within fourteen (14) days after service of the objections. Fed.R.Civ.P. 72(b)(2). Failure to file objections to this Memorandum and Recommendation with the District Court constitutes a waiver of the right to *de novo* review by the

¹ Defendant’s counsel is respectfully advised to review the Local Rules prior any additional filing in this case.

District Court. Diamond v. Colonial Life, 416 F.3d 310, 315-16 (4th Cir. 2005); United States v. Benton, 523 F.3d 424, 428 (4th Cir. 2008). Moreover, failure to file timely objections will preclude the parties from raising such objections on appeal. Id. “In order ‘to preserve for appeal an issue in a magistrate judge’s report, a party must object to the finding or recommendation on that issue with sufficient specificity so as reasonably to alert the district court of the true ground for the objection.’” Martin v. Duffy, 858 F.3d 239, 245 (4th Cir. 2017) (quoting United States v. Midgette, 478 F.3d 616, 622 (4th Cir. 2007)).

IT IS SO RECOMMENDED AND ORDERED.

Signed: August 21, 2024



David C. Keesler
United States Magistrate Judge

